

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RICHARD G. TATUM, individually)
and on behalf of a class of all other)
persons similarly situated,)

Plaintiffs,)

v.)

Civil Action No. 1:02 CV 00373

R.J. REYNOLDS TOBACCO)
COMPANY, *et al.*,)

Defendants.)

OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE DEFENDANTS'
SUGGESTION OF SUBSEQUENTLY DECIDED AUTHORITY

On July 7, 2010, Defendants filed a Suggestion of Subsequently Decided Authority (Docket #394) ("Suggestion"), bringing to the Court's attention four decisions regarding amendment under Rule 15 of the Federal Rules of Civil Procedure that are relevant to Defendants' Memorandum in Opposition to Plaintiff's Motion to Amend Under Fed. R. Civ. P. 15(b)(2) (Docket #366) ("Memorandum"). Defendants' Suggestion was not argumentative, but provided in a single sentence for each case the holding that Defendants' believe supports the arguments in their Memorandum. Each of the four cases was decided subsequent to the filing of Defendants' Memorandum.

Defendants did not assert in their Suggestion that the cases cited were binding upon this Court; Defendants readily agree they are not. But Defendants' Suggestion is consistent with the local practice in this District to provide to the Court any subsequently-

decided authority that may be helpful to the resolution of pending matters. The parties in this case have followed that local practice in this case. In fact, Plaintiff has filed similarly-nonbinding decisions with the Court through notices of subsequently decided authority, the most recent less than four months ago. (*See* Docket #40 (5th Cir.); Docket #41 (3rd Cir.); Docket #71 (S.D. Tex.); Docket #181 (N.D. Ill.); Docket #268 (1st Cir.); Docket #353 (unreported 4th Cir.); Docket #368 (D.C. Cir.).)

Even though Defendants' Suggestion is consistent with the local practice in this District and the parties' practice in this case, Plaintiff filed a motion to strike Defendants' Suggestion and a three page brief in support of his motion accusing Defendants and/or their counsel of some impropriety. (*See* Mem. Law Supp. Pl.'s Mot. Strike Defs.' Suggestion Additional Authority (Docket #396).) And, as if that were not enough to notify the Court of his concerns, Plaintiff filed an additional four page "Objection," in which Plaintiff argues why he believes the cases in Defendants' Suggestion are distinguishable from the issues before the Court. (*See* Pl.'s Objection Defs.' Suggestion Subsequently Decided Authority (Docket #396-1).)

Although Defendants disagree with Plaintiff's arguments about the inapplicability of the cases cited in Defendants' Suggestion, Defendants do not object to the Court considering Plaintiff's Objection. But, for the reasons stated above, Defendants' Suggestion, which alerted the Court in a non-argumentative way to relevant, recently-decided caselaw, is not improper. Therefore, Defendants respectfully request that the Court deny Plaintiff's Motion to Strike Defendant's Suggestion of Subsequently Decided

Authority and give the cases cited in Defendants' Suggestion whatever weight the Court deems proper.

Respectfully submitted this the 6th day of August, 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2010, I electronically filed the foregoing
OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE DEFENDANTS'
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Court using the CM/ECF system which will send notification of such filing to the
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